



# Notice of Allowability

Application No.

09/723,989

Examiner

Carl H. Layno  
Carl H. Layno

Applicant(s)

BEN-HAIM ET AL.

Art Unit

3762

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 1.
2. ☒ The allowed claim(s) is/are 59-90.
3. ☐ The drawings filed on \_\_\_\_\_ are acceptable as formal drawings.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/101,723.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_

5. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE FOR SUBMITTING NEW FORMAL DRAWINGS, OR A SUBSTITUTE OATH OR DECLARATION.** This three-month period for complying with the REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL is extendable under 37 CFR 1.136(a).

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.
7. ☒ Applicant MUST submit NEW FORMAL DRAWINGS
  - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review( PTO-948) attached
    - 1) ☒ hereto    or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the examiner.
  - (c) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

## Attachment(s)

- |  |   |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)  | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____             |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. <u>1</u> | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|  | 9 <input type="checkbox"/> Other  |

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### DETAILED ACTION

1. Acknowledgment is made of applicant's preliminary amendment which was received by the Office on November 28, 2000. This document has been made of record in the file as Paper No.2.

2. Claims 1-58 are canceled. Claims 59-90 are added.

### *Priority*

3. Acknowledgment is made of applicant's claim for priority as a continuation of U.S. Application Serial number 09/101,723, filed August 13, 1998.

4. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/101,723, filed on August 13, 1998.

### *Information Disclosure Statement*

5. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on November 28, 2000. This document has been made of record in the file as part of Paper No.1.

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## Drawings

6. This application has been filed with informal drawings which are acceptable for examination purposes only.

### ***Allowable Subject Matter***

7. Claims 59-90 are allowed.

## EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bill Dippert on June 8, 2001 and on June 18, 2001.

The application has been amended as follows:

-In claim 63, ~~line 1~~, replace the words “the desired change” with the statement “the variation in cardiac muscle contraction”,

-In claims 64 and 65, line 1 of each claim, replace the words "the desired change is an increase" with the words "the variation in cardiac muscle contraction is followed by an increase".

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-In claims 66 and 68, line 1 of each claim, replace the words "the desired change is a change" with the words "the variation in cardiac muscle contraction is followed by a change",

-In claims 81-83, line 4 of each claim, add the words "using a non-excitatory electric field" after the term "Right Ventricle", and

-In claim 85, line 1, replace the term "the change" the words "the variation in cardiac muscle contraction".

**Reasons for Allowance**

9. The following is an examiner's statement of reasons for allowance:

As written, the Examiner could find no prior art references which show or teach the applicant's method of modifying heart activity wherein a "non-excitatory" electric field is applied to the Right Ventricle in order to cause a variety of desired changes.

All remaining claims having been allowed, **formal drawings are now required.**

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Carl H. Layno

CARL LAYNO  
PRIMARY EXAMINER, Av3762

CHL  
6/7/01

09723989-12000

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

NOTICE OF ALLOWANCE AND ISSUE FEE DUE

QM22/0705

WILLIAM H DIPPERT  
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APPLICATION NO.	FILING DATE	TOTAL CLAIMS	EXAMINER AND GROUP ART UNIT	DATE MAILED
09/723,989	11/28/00	032	LAYNO, C	3762 07/05/01
First Named Applicant	BEN-HAIM,			35 USC 154(b) term ext. = 0 Days.

TITLE OF INVENTION: ELECTRICAL MUSCLE CONTROLLER USING A NON-EXCITATORY ELECTRIC FIELD.

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BATCH NO.	APPLN. TYPE	SMALL ENTITY	FEE DUE	DATE DUE
20066.70	607-009.000	131	UTILITY	NO	\$1240.00	10/05/01

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED.**

**THE ISSUE FEE MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED.**

**HOW TO RESPOND TO THIS NOTICE:**

I. Review the SMALL ENTITY status shown above.  
If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

If the SMALL ENTITY is shown as NO:

- A. If the status is changed, pay twice the amount of the FEE DUE shown above and notify the Patent and Trademark Office of the change in status, or
- B. If the status is the same, pay the FEE DUE shown above.

A. Pay FEE DUE shown above, or

B. File verified statement of Small Entity Status before, or with, payment of 1/2 the FEE DUE shown above.

II. Part B-Issue Fee Transmittal should be completed and returned to the Patent and Trademark Office (PTO) with your ISSUE FEE. Even if the ISSUE FEE has already been paid by charge to deposit account, Part B Issue Fee Transmittal should be completed and returned. If you are charging the ISSUE FEE to your deposit account, section "4b" of Part B-Issue Fee Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give application number and batch number.  
Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

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